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Amendment and Response to July 26, 2007 Non-Final Office Action

Therefore, Applicant requests the reconsideration and withdrawal of the rejection of claims 5 – 7 under 35 USC 2<sup>nd</sup> paragraph.

### **Claim Rejections – 35 USC § 102**

Claims 1 – 3, 5 – 11, and 17 – 18 were rejected under 35 U.S.C. 102(e) as being anticipated by Becker et al., U.S. Patent No. 6,981,223. This rejection is traversed.

In response to Applicant's previous arguments, the Office Action dated July 26, 2007 (hereafter, the OA) stated:

It appears the applicant is giving more meaning and breadth to the term "availability" than is allowed. The term 'availability' can be interpreted as broadly as the system merely being able to identify the media capability of the communication devices of Lou, i.e., a fax machine/computer/phone is shown and therefore availability information of faxing/emailing, etc is shown, even though not necessarily presently on at the time.

Applicant respectfully disagrees with the Examiner's statements regarding the meaning and breadth of the term "availability". In particular, Applicant submits that the term "availability" has a specific and limited meaning within the context of the cited and relied upon Becker reference. Referring to Becker, it is noted that,

The term "personal presence" or "availability," which applies in such contexts as an instant message exchange, refers to the type of presence of an individual. Availability is represented in FIG. 1 by a parenthetical descriptive word (although any distinctive font, color, icon, and so forth may be used to so indicate). For example, if an individual is actively working at a computer that is running a browser suitable for instant message exchange, the availability message is "available." If the person leaves the computer for an extended period of time and the pal's computer is programmed to detect and signal a prolonged period of inactivity, the availability message is "idle." If supported by the pal's computer, a pal may signal certain types of presence such as "out to lunch" or "back in 5 minutes" and so forth. (emphasis added) (Becker, col. 29 – 34)

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Thus, it is clear that Becker explicitly defines and limits the meaning of the term "availability" used therein.

As defined by Becker, the availability refers to the presence of an individual. It is noted that although it appears that the personal presence or *availability* of the individual may be signaled by a device (e.g., a computer supporting/providing proper signaling), there is no disclosure or suggestion that the disclosed personal presence or *availability* relates to or refers to an availability of any media capability of a communication device as claimed by Applicant. Again, the "availability" disclosed and used in Becker refers to the type of presence of an individual.

Accordingly, Applicant submits that the Office Action's statement that "the term availability can be interpreted as broadly as a system being able to identify the media capability of the communication devices of Lou" is not supported by the Becker reference. Thus, Applicant respectfully submits that this line of reasoning to maintain the rejection of Applicant's claims is fatally flawed and lacks support from the cited and relied upon Becker.

Additionally, Applicant submits that Becker does not disclose the system therein identifies the media capability of communication devices (e.g., a fax, computer, or phone associated with a pal such as Lou). Instead, Becker provides a "device presence" for devices associated with a user. Becker explicitly states,

The term "device presence" refers to the type of online messaging device that the particular pal is using at the time, and is represented in FIG. 1 by an icon (although any distinctive font, color, icon, and so forth may be used to so indicate). Many different types of messaging are possible, including, for example, HTML browser clients and downloaded IM clients, visual messaging services provided by various operating systems and applications running on personal data assistant devices and mobile phones, and audio messaging services provided by various operating systems and applications running on personal data assistant devices and computers as well as internet phones such as the recent Java-based J2ME phones like the Accompli 008i from Motorola, Inc. of Schaumburg, Ill. A pal may use several different types of messaging, which may be represented by additional icons on the same line, by other lines for the same user but distinguished by different device presence

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icons, by a pop-up list, and so forth. The pals list show in the pals panel 100 of FIG. 1 is configured, for example, to show all pals having a computer browser presence, which is indicated by the keyboard device presence icons next to their names. (emphasis added) (Becker, col. 8, ln. 39 – 57)

Thus, it is clear that Becker's "device presence" refers to type of online messaging device that a particular pal (i.e., user) is using at a particular point in time.

Applicant notes that Becker does not disclose the system therein as identifying the media capability of communication devices (reasoning relied upon by the Office Action, pg. 2). According to Becker, a device presence referring to a messaging device being used by a pal is disclosed, as well as a personal presence or availability that refers to the presence of the individual pal is disclosed or taught. Neither the device presence nor the availability or personal presence refers to or identifies a media capability of a communication device. Additionally, it does not appear that Becker is particularly concerned with the particular mode of communication used or the media capability of a device.

Thus, Applicant disagrees with the Office Action's statements that Becker discloses identifying the media capability of the communication devices therein. Becker instead provides an indication of device presence and personal presence, but no determination of a media capability of a communication device.

Also, the Office Action provides no support, other than Becker, for the suggested broad definition or interpretation of "availability" stated and relied upon in the Office Action (i.e., system merely being able to identify the media capability of the communication devices of Lou is shown and therefore the availability information of faxing/emailing, etc is shown). Applicant respectfully submits that the Office Action statements have been shown to be false since Applicant has clearly demonstrated that Becker does not support the broad interpretation of the term "availability" stated in the Office Action and no other support is supplied by the Office.

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Regarding the chart shown in the AF Response dated 04/30/2007, page 8, Applicant clarifies that which is demonstrated in the chart based on the disclosure of the Becker reference. As discussed hereinabove in great detail, the Becker "availability" (i.e., personal presence) is not the same as the claimed availability information for at least one media capability associated with a communication device. Thus, even where an availability is indicated (e.g., for a keyboard) such availability is not the same as the claimed availability information for at least one media capability associated with a communication device. Accordingly, the chart of record does not, in fact, identify Becker as showing the identification of media capabilities since the Becker "availability" (i.e., personal presence) is not the same as the claimed availability information.

Becker's mere indication of a device presence or a personal presence (i.e., availability of an individual) is not the same as or even suggestive of the claimed "determining availability information for each of said at least one media capability associated with each of said plurality of communication devices, where the availability information for each of said at least one media capability provides an indication of the availability for each of said at least one specific media capability" (claim 1, with similar wording provided in claims 17 and 18). Accordingly, Applicant respectfully submits that Becker does not anticipate claims 1, 17, and 18.

Therefore, Applicant respectfully submits that the basis of the Office's continued rejection of claims 1 - 3, 5 - 11, and 17 - 18 under 35 USC 102(e) are not supported by the cited and relied upon Becker.

Accordingly, Applicant requests the reconsideration and withdrawal of the rejection of claims 1 - 3, 5 - 11, and 17 - 18 under 35 USC 102(e), as well as the allowance of same.

### **CONCLUSION**

Accordingly, Applicant respectfully requests allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting

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allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (408) 492-5336.

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